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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

10 HECTOR L. RESSY,

11 Plaintiff,

12 v.

13 KING COUNTY and D. BENEVENTE,

14 Defendants.

CASE NO. C11-760 MJP

ORDER GRANTING  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT

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16 This matter comes before the Court on Defendants' motion for summary judgment. (Dkt.  
17 No. 30.) Having reviewed the motion, the response (Dkt. No. 39), the reply (Dkt. No. 41), and  
18 all related papers, the Court GRANTS the motion.

19 **Background**

20 Plaintiff Hector Ressay brings several claims arising out of an incident at the King County  
21 Correctional Facility on May 5, 2008. He alleges he was placed in overtightened handcuffs  
22 while being transported from a dayroom to a visitor room. He brings claims of excessive force,  
23 cruel and unusual punishment, as well as negligence and assault and battery claims. At the time  
24 of the incident, he was a pre-hearing detainee brought in on a probation violation.

1 Ressay claims officer Danny Benavente (apparently misspelled by Plaintiff as  
2 “Benevente”) placed him in handcuffs that were too tight while being led from a dayroom to visit  
3 his attorney on May 5, 2008. During the two minute walk, Benavente allegedly held Ressay’s  
4 arms, bumped him against the wall, and did not loosen his handcuffs. Ressay claims Benavente  
5 told him “so you like to file grievances?” as they walked to the visitor room. (Ressay Decl. ¶ 1.)  
6 He did not apparently complain to Benavente about the handcuffs when he was led to the  
7 meeting room. Ressay then met with his attorney for roughly twenty minutes, during which he  
8 was not handcuffed. He claims his wrists were painful and hands numb. After the meeting he  
9 was placed back in handcuffs again and led back to his cell. Benavente states that “[a]t some  
10 point prior to being returned to his cell, Mr. Ressay complained about his wrists.” (Benavente  
11 Decl. ¶ 8.) Benavente states that Ressay was non-responsive to his question of whether he wanted  
12 to see a nurse. (Id.) Another officer on duty, Pablo Chan, also states Benavente asked Ressay if  
13 he wanted to have his wrists examined as they were returning to Ressay’s cell. (Chan Decl. ¶ 6.)  
14 Chan, too, asked Ressay the same question, but Ressay did not respond except to say “huh.” (Id.)  
15 Roughly ten minutes after returning to his cell, Ressay called Chan for a medical exam. A  
16 nurse saw him about three and a half hours later on his report of a painful wrist due to tightened  
17 cuffs. (Dkt. No. 36 at 5.) The nurse found a good range of motion, no decreased movement,  
18 abrasions, and no open wounds or evidence of trauma to right wrist. (Id.) He did, however, note  
19 “[s]everal small red areas to right wrist.” (Id.) Fifteen days later on May 20, 2008, Ressay visited  
20 a nurse complaining of wrist pain and numbness. (Dkt. No. 37.) The nurse noted no swelling,  
21 redness, or pain to the touch and Ressay was not limited in his range of movement. (Id. at 4.) On  
22 May 30, 2008, Ressay saw another nurse complaining of chest pain. He also stated that the  
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handcuffs placed on him prior to that specific visit hurt him. (Dkt. No. 38 at 5.) Oddly, he “denie[d] any problems with his right hand prior to this visit.” (Id.)

At his deposition, Ressay explained that during the incident on May 5, 2008, he felt numbness and tingling in his wrist during the incident, but that he has not sought medical care for this condition. (Ressay Dep. at 14.) He also revealed that he was involved in a separate incident in September, 2011, where he claims Pierce County Sheriffs injured his right hand. (Id. at 23, 24, 32.) This exacerbated the numbness and tingling in his right hand. (Id. at 32.)

Ressay filed a pro se complaint alleging claims of: (1) excessive force in violation of the Fourth Amendment; (2) cruel and unusual punishment in violation of the Eighth, Fifth and Fourteenth Amendments; (3) Monell liability for these constitutional violations against the County; (4) assault and battery; and (5) negligence as to Benavente and the County. Defendants move for summary judgment on all claims.

### **Analysis**

#### **A. Standard**

The Court “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The Court views the underlying facts in the light most favorable to the party opposing the motion. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). The moving party has the burden to show the absence of a genuine issue of material fact. Adickes v. S.H. Kress & Co., 398 U.S. 144, 159 (1970). Once the moving party has met its initial burden, the nonmoving party must “designate specific facts showing that there is a genuine issue for trial.” Celotex Corp. v. Catrett, 477 U.S. 317, 323-24 (1986).

#### **B. Qualified immunity**

1 Benavente asserts a defense of qualified immunity to Ressay's Fourth Amendment claim.  
2 The Court finds Benavente is entitled to qualified immunity.

3 The doctrine of qualified immunity protects government officials "from liability for civil  
4 damages insofar as their conduct does not violate clearly established statutory or constitutional  
5 rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800,  
6 818 (1982). To analyze whether the immunity attaches, the Court engages in a two step inquiry  
7 in no required order. Pearson v. Callahan, 555 U.S. 223, 236 (2009). The Court must consider  
8 whether the alleged constitutional right was clearly established at the time of the incident.  
9 Saucier v. Katz, 533 U.S. 194, 201 (2001). The court must consider whether the facts "[t]aken in  
10 the light most favorable to the party asserting the injury . . . show [that] the [defendant's] conduct  
11 violated a constitutional right[.]" Id. "Qualified immunity is applicable unless the official's  
12 conduct violated a clearly established constitutional right." Pearson, 555 U.S. at 232.

13 An initial question is whether the Fourth Amendment's protections apply to Plaintiff  
14 while he was a pre-hearing detainee on a probation violation. They do. In Pierce v. Multnomah  
15 County, Or., the Ninth Circuit recognized the Supreme Court in Graham "made clear that pre-  
16 trial detainees are protected by the Constitution from excessive force that amounts to  
17 punishment." 76 F.3d 1032, 1042 (9th Cir. 1996). The court in Pierce decided that the Fourth  
18 Amendment protected pre-trial detainees who were arrested without a warrant and held prior to  
19 arraignment. Id. at 1043. Here, Plaintiff was held prior to a hearing on his alleged probation  
20 violation, but it is not clear whether his arrest was with or without a warrant. Even if it was an  
21 arrest with a warrant, the Court holds the Fourth Amendment's protections apply to Plaintiff's  
22 claim.

23 1. Clearly Established?  
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1 It is clearly established that a pretrial detainee cannot be placed in handcuffs in a manner  
2 that causes an appreciable injury.

3 When identifying the right that was allegedly violated, a court must define the right more  
4 narrowly than the constitutional provision guaranteeing the right, but more broadly than all of the  
5 factual circumstances surrounding the alleged violation. See Watkins v. City of Oakland, Cal.,  
6 145 F.3d 1087, 1092-93 (9th Cir. 1998). The determination of whether a right is clearly  
7 established must be “undertaken in light of the specific context of the case.” Saucier, 533 U.S. at  
8 201. “The contours of the right must be sufficiently clear that a reasonable official would  
9 understand that what he is doing violates that right.” Anderson v. Creighton, 483 U.S. 635, 640  
10 (1987). To conclude that the right is clearly established, the court need not identify an identical  
11 prior action. See Anderson, 483 U.S. at 640.

12 As of May 2008, the law was clearly established that an officer could violate the Fourth  
13 Amendment by excessively tightening handcuffs in a manner that causes observable pain. The  
14 Ninth Circuit has held at least twice that over-tightening restraints can be the basis of a violation  
15 of the Fourth Amendment’s guarantee to be free from excessive force. Palmer v. Sanderson, 9  
16 F.3d 1433, 1436 (9th Cir. 1993); Hansen v. Black, 885 F.2d 642, 645 (9th Cir. 1989). While  
17 these cases both dealt with arrestees, Defendants seem to concede that these cases apply to  
18 pretrial detainees. The facts of those cases show the tightening must be more than usual and that  
19 it often includes an officer failing to heed a request to loosen the handcuffs. In Palmer, the court  
20 held that the application of handcuffs in a manner that caused pain and bruising that lasted  
21 several weeks violated the Fourth Amendment. 9 F.3d at 1436. Notably, the arrested individual  
22 complained about the cuffs and the officer did nothing to alleviate the pain in his visibly  
23 discolored wrists. Similarly, in Hansen, the court found that the application of handcuffs that left  
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1 bruises and caused pain in the fingers of an arrestee could be sufficient to prove an excessive  
2 force claim. 885 F.2d at 645. The court also noted the officer was rough and abusive to the  
3 point the plaintiff received bruises to her wrist that required medical treatment, and a bystander  
4 observed what appeared to be extremely rough behavior. Id.

5 The Court finds it clearly established as of May 5, 2008, that a corrections officer can  
6 violate a pre-hearing detainee's Fourth Amendment rights by over-tightening handcuffs in a  
7 manner that inflicts observable pain or injury, particularly where the officer disregards the  
8 detainee's complaints the cuffs are over-tightened.

9 2. Constitutional Violation?

10 Ressay has failed to present facts supporting his claim Benavente's application of  
11 handcuffs constitutes excessive force.

12 The question to resolve here is "[t]aken in the light most favorable to the party asserting  
13 the injury, do the facts alleged show the officer's conduct violated a constitutional right?"  
14 Saucier, 533 U.S. at 201. Determining whether a defendant officer's use of force was  
15 "reasonable" under the Fourth Amendment "requires a careful balancing of the nature and  
16 quality of the intrusion on the individual's Fourth Amendment interests against the  
17 countervailing government interests at stake." Graham v. Connor, 490 U.S. 386, 396 (1989)  
18 (internal quotations omitted). "This analysis requires 'careful attention to the facts and  
19 circumstances in each particular case, including the severity of the crime at issue, whether the  
20 suspect poses an immediate threat to the safety of the officers or others, and whether he is  
21 actively resisting arrest or attempting to evade arrest by flight.'" Gibson v. County of Washoe,  
22 Nev., 290 F.3d 1175, 1197 (9th Cir. 2002) (quoting Graham, 490 U.S. at 396). The Court is also  
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1 to weigh the circumstances from the viewpoint of a reasonable officer at the scene, not using  
2 20/20 hindsight. Id.

3       The facts here do not show that an officer in Benavente's position would have known that  
4 he was using excessive force. Benavente was following normal procedures to place handcuffs  
5 on Ressay to move him from the dayroom to the visitor room. (Hyatt Decl. ¶¶ 8-9; Benavente  
6 Decl. ¶ 10.) The cuffs were placed on twice, and the application was for roughly two minutes at a  
7 time. Ressay did not complain to Benavente at the time they were first placed on. Instead, Ressay  
8 states he only told Benavente to "get his hands off [him]." (Ressay Decl. ¶ 3.) On the return trip,  
9 Benavente asked Ressay if he wanted to see a doctor about his wrist, which Ressay declined.  
10 (Benavente Decl. ¶ 8.) Ressay has presented inadequate factual evidence that the application of  
11 the handcuffs caused observable or significant pain. He testified he experienced tingling and  
12 numbness in his right wrist at the time of the incident. (Ressay Dep. at 14.) He refused medical  
13 care initially, and the nurse who saw him several hours later noted at most "several small red  
14 areas to right wrist." (Dkt. No. 36 at 5.) He had no sensation problems with his hand, no  
15 abrasions or any evidence of trauma. (Id.) Fifteen days later there was still no evidence of pain  
16 or numbness in his right wrist. (Dkt. No. 37 at 4.) Contradictorily, ten days after that, Ressay  
17 "denie[d] any problems with his right hand prior to visit." (Dkt. No. 38 at 5.) This contradictory  
18 record is difficult to square with Ressay's allegations that he felt pain in his wrist for a year  
19 following the incident. (Ressay. Decl. ¶ 4.) These facts are not enough to sustain Ressay's claim.  
20 See Arpin v. Santa Clara Valley Transp. Agency, 261 F.3d 912, 922 (9th Cir. 2001) (holding that  
21 conclusory allegations unsupported by medical evaluations fail to create a dispute of fact as to  
22 whether the plaintiff suffered an injury as a result of being handcuffed).

1 The Court GRANTS the motion for summary judgment on qualified immunity grounds.  
2 No reasonable officer in Benavente's position would have known he was violating Ressay's  
3 rights.

4 B. Eighth Amendment

5 Ressay brings a claim for cruel and unusual punishment, which for pre-trial detainees, is a  
6 form of Fifth Amendment claim. Ressay also casts this as a claim under the Fourteenth  
7 Amendment. Ressay has failed to present any facts supporting this claim and failed to oppose the  
8 opening brief on this issue, which is an admission the motion has merit. Local Rule CR 7(b)(2).

9 "[P]retrial detainees . . . possess greater constitutional rights than prisoners." Stone v.  
10 City of San Francisco, 968 F.2d 850, 857 n.10 (9th Cir. 1992). A pretrial detainee's right to be  
11 free from punishment is grounded in the Due Process Clause, but courts borrow from Eighth  
12 Amendment jurisprudence when analyzing the rights of pre-trial detainees. See Pierce v. County  
13 of Orange, 526 F.3d 1190, 1205 (9th Cir. 2008). Unless there is evidence of intent to punish,  
14 then those conditions or restrictions that are reasonably related to legitimate penological  
15 objectives do not violate pretrial detainees' right to be free from punishment. See Block v.  
16 Rutherford, 468 U.S. 576, 584 (1984) (citing Bell v. Wolfish, 441 U.S. 520, 538-39 (1979)).  
17 Order and security are legitimate penological interests. See White v. Roper, 901 F.2d 1501, 1504  
18 (9th Cir. 1990).

19 Ressay has not produced evidence that there was an intent to punish him by placing him in  
20 handcuffs. Ressay points to one statement that Benavente purportedly told him "so you like to  
21 file grievances?" (Ressay Decl. ¶ 40.) Even if this was true, there is inadequate evidence that he  
22 was restrained in a manner that could amount to punishment. He was placed in handcuffs in the  
23 manner proscribed by the jail facility in order to protect staff, other inmates, and visitors. (Hyatt  
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Decl. ¶¶ 5-6.) These are valid penological and security interests to support the use of handcuffs. As explained above, the only evidence of any harm was the redness observed on Ressay's wrist, and Ressay's subjective complaints of numbness and pain. The contemporaneous nurse observation does not seem to confirm Ressay's complaints. Even when coupled with the claim that Benevente's jibe about Ressay filing complaints, the facts cannot sustain a claim for cruel and unusual punishment.

Ressay also appears to contend that he was subjected to cruel and unusual punishment as a result of Benevente bumping him into the wall and holding his arms. However, he has not alleged that the use of force caused him any harm and has provided no evidence to support the claim. There does not appear to be objective evidence showing he was bumped to the extent that it caused any harm. Benevente admits he put his hands on Ressay's arm, but only to control him as they went down the stairs. Officer Chan observed this technique, and it was consistent with King County policies. (Chan Decl. ¶ 5; Hyatt Decl. ¶ 9.) No facts corroborate the declaration in which Ressay states he was bumped or that he was roughed up. These facts do not show cruel and unusual punishment.

The Court GRANTS summary judgment in favor of Benevente on the Eighth, Fifth, and Fourteenth Amendment claims.

C. Monell Liability Against County

Ressay's constitutional claims against the County require a showing that an official policy or custom caused the constitutional deprivation. Monell v. Dep't of Soc. Serv., 436 U.S. 58, 690-91 (1978). Because Ressay has shown no constitutional violations, there can be no Monell liability. The Court GRANTS the motion and DISMISSES these claims.

D. Assault and Battery

1        Ressy's claim for assault and battery is time-barred. A claim for assault and battery is  
2 governed by a two-year statute of limitations. RCW 4.16.100. Ressy alleges the incident took  
3 place on May 5, 2008, but waited until May 6, 2011, to file his claim. It is time-barred and  
4 therefore DISMISSED.

5 E.     Negligence

6        Ressy inadequately alleges that Benavente negligently failed to protect him from physical  
7 harm, and that the County is liable through the principle of respondeat superior.

8        “The essential elements of actionable negligence are: (1) the existence of a duty owed to  
9 the complaining party; (2) a breach thereof; (3) a resulting injury; and (4) a proximate cause  
10 between the claimed breach and resulting injury.” Pedroza v. Bryant, 101 Wn.2d 226, 228  
11 (1984). “The causal relationship of an accident or injury to a resulting physical condition must  
12 be established by medical testimony beyond speculation and conjecture.” Carlos v. Cain, 4 Wn.  
13 App. 475, 477 (1971) (quotation omitted). “It must rise to the degree of proof that the resulting  
14 condition was probably caused by the accident, or that the resulting condition more likely than  
15 not resulted from the accident, to establish a causal relation.” Id. (quotation omitted).

16        Ressy's complaint alleges Benevent breached a “duty to take reasonable steps to protect  
17 inmates from physical harm.” (Compl. ¶ 45.) In his response brief, he cites to the Prisoner  
18 Handbook, which states he would be “provide[d] protection from abuse, corporal punishment,  
19 personal injury, disease, and harassment.” (Dkt. No. 39 at 4.)

20        Ressy's negligence claim fails for lack of evidence of causation between the alleged acts  
21 and his purported injury. Ressy claims he suffers ongoing pain and numbness that arose out of  
22 the incident on May 5, 2008. The medical evidence shows that four hours after the incident there  
23 was no evidence of pain, reduced motion, or lack of sensation. (Dkt. No. 36 at 5.) Ressy has  
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1 provided no medical evidence that would show the alleged handcuffing caused the harm about  
2 which he complains. He admits, in fact, that he never sought treatment for the condition. There  
3 is further evidence that he was later injured in an incident in 2011 that may in fact be the cause of  
4 any pain he now claims. With inadequate evidence of causation, Ressay cannot proceed on this  
5 claim. The Court GRANTS the motion on this issue and DISMISSES the claim against  
6 Benavente.

7 Any claim for respondeat superior liability cannot be sustained, as it is premised on there  
8 being a viable negligence claim. The claim is thus DISMISSED as to the County, as well.

9 F. Request for Counsel

10 In his motion, Ressay requests appointment of counsel to help with his Monell claim.  
11 Because that claim is dismissed for lack of actionable constitutional claims, the Court DENIES  
12 the request as MOOT. It would not aid in his cause or be a reason to deny summary judgment.

13 **Conclusion**

14 The Court GRANTS the motion in full. Ressay fails to present sufficient evidence of a  
15 violation of his Fourth, Fifth, Eighth or Fourteenth Amendment rights. Benavente's actions were  
16 not unreasonable or excessive. Ressay's constitutional claims fail against both Benavente and the  
17 County. His assault and battery claim is time barred, and his negligence claim lacks sufficient  
18 evidence of causation to survive dismissal. The case is DISMISSED in full.

19 The clerk is ordered to provide copies of this order to Plaintiff and all counsel.

20 Dated this 13th day of June, 2012.

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23 Marsha J. Pechman  
24 United States District Judge